

Assembly Bill No. 1749

CHAPTER 501

An act to amend Sections 22962, 22971, and 22980.1 of, to add Sections 22979.21, 22979.22, 22979.23, and 22979.24 to, and to repeal Chapter 7 (commencing with Section 22995) of Division 8.6 of, the Business and Professions Code, to amend Section 308 of, to amend Section 14950 of the Health and Safety Code, to amend and repeal Section 830.11 of, the Penal Code, and to amend Sections 30019, 30142, 30168, 30435, 30473, 30474, 30474.1, and 30475 of, and to repeal Sections 30216 and 30359 of, the Revenue and Taxation Code, relating to cigarettes and tobacco products.

[Approved by Governor September 27, 2006. Filed with
Secretary of State September 27, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1749, Jerome Horton. Cigarettes and tobacco products.

(1) The California Cigarette and Tobacco Products Licensing Act of 2003 provides, until January 1, 2010, for the licensure by the State Board of Equalization of manufacturers, distributors, wholesalers, importers, and retailers of cigarettes or tobacco products that are engaged in business in California.

This bill would require manufacturers and importers of specified tobacco products engaged in business in this state to obtain and maintain a license. This bill would require that the provisions related to obtaining and maintaining a manufacturers and importers license become operative May 1, 2007. This bill would require these manufacturers or importers to provide the board with specified information, submit a license application to the board, as described, pay a one-time license fee of \$2,000 or \$10,000, as specified, and submit a monthly report to the board providing information regarding sales of tobacco products, including the wholesale cost of the tobacco products, subject to suspension or revocation of the license, as provided. This bill would provide that the information provided to the board is confidential and shall not be disclosed to the public, except in specified situations. Additionally, this bill would provide that the information and records provided to the board are not a public record, and makes findings demonstrating the interest protected by that limitation and the need for protecting that interest. This bill would require an applicant to verify the accuracy of the application and to affirm that the applicant has not been convicted of a felony and has not and will not violate or cause or permit to be violated the licensing requirement, subject to the imposition of criminal penalties as a misdemeanor, thus imposing a state-mandated local program.

(2) Existing law defines an “importer” as any purchaser in the United States of cigarettes manufactured outside of the United States.

This bill would also redefine “importer” to be any purchaser for resale in the United States of cigarettes or tobacco products manufactured outside of the United States for the purpose of making a first sale or distributing within the United States.

(3) The California Cigarette and Tobacco Products Licensing Act of 2003 prohibits manufacturers from selling cigarettes to distributors, wholesalers, importers, retailers, or any other person who is not licensed, as specified. The act further prohibits retailers, distributors, wholesalers, or importers from purchasing packages of cigarettes from any person unless he or she is in compliance with these licensure requirements, as specified. A violation of any of these provisions is a misdemeanor.

This bill would expand the above prohibitions by also providing that a manufacturer or importer shall not sell tobacco products to retailers, distributors, wholesalers, or any other person who is not licensed, as provided, and would prohibit a retailer, distributor, or wholesaler from purchasing packages of cigarettes or tobacco products from any person who is not licensed or whose license has been suspended or revoked. This bill would provide that a manufacturer or importer who uses the information provided on the board’s Web site to determine a person’s licensing status is presumed to be in compliance with these provisions. This bill would provide that these provisions shall become operative May 1, 2007.

By expanding the scope of an existing crime, this bill imposes a state-mandated local program.

(4) The act, in addition to providing for the licensing and regulation of manufacturers, distributors, wholesalers, importers, and retailers of cigarettes or tobacco products that are engaged in business in California, prohibits a manufacturer, distributor, wholesaler, importer, retailer, or any other person from selling counterfeit cigarette and tobacco products and provides that a violation of that prohibition is a crime. The act imposes specified fines or imprisonment for possessing, selling, or buying false or fraudulent cigarette tax stamps. The act also requires manufacturers and importers of cigarette products that provide those products to distributors or wholesalers to pay the board a fee for cigarettes sold in this state. Under existing law, the act is repealed, by its own terms, January 1, 2010.

This bill would delete the repeal date specified in current law, extending indefinitely the operation of the California Cigarette and Tobacco Products Licensing Act of 2003.

(5) The California Cigarette Fire Safety and Firefighter Protection Act prohibits the sale of cigarettes, as defined, unless the manufacturer of those cigarettes certifies to the State Fire Marshal that the cigarettes they manufacture comply with specified provisions.

This bill would provide that, for the purposes of the California Cigarette Fire Safety and Firefighter Protection Act, the definition of a cigarette does not include a little cigar, as defined.

(6) Existing law regulates the distribution and sales of various types of tobacco products in the state, and specifies civil and criminal sanctions for violations of that regulatory scheme. Existing law prohibits any person from selling, giving, a furnishing specified tobacco products to a person under the age of 18 years, as provided. Existing law makes a violation of this prohibition a misdemeanor or makes that person subject to civil action.

This bill would expand this prohibition to include tobacco products commonly referred to as “blunt wraps,” as defined, and thus impose a state-mandated local program by changing the definition of an existing crime. This bill would clarify that persons who violate this prohibition are subject to both criminal and civil liability.

(7) Existing law prohibits specific types of displays of tobacco paraphernalia and products, subject to specified civil penalties. Existing law also requires specified labels on retail packages of cigars.

This bill would additionally prohibit the self-service display of blunt wraps, as provided. This bill states the intent of the Legislature that all manufacturers or importers of blunt wraps place, or cause to be placed, a specified label on retail packages of blunt wraps, as required by federal law.

(8) Existing law requires the State Board of Equalization to administer various taxes and fees, including taxes with respect to cigarettes and tobacco products, alcoholic beverages, motor vehicle fuel, and diesel fuel, among others. Existing law authorizes, until January 1, 2010, persons designated by the Executive Director of the State Board of Equalization to exercise the arrest powers of a peace officer in the enforcement of the taxes and fees administered by the State Board of Equalization.

This bill would delete the repeal date specified in existing law, extending the ability of designated persons to exercise the specified arrest powers indefinitely.

(9) Existing law establishes procedures under the Cigarette and Tobacco Products Tax Law for imposing taxes on sellers of black-market cigarettes and tobacco products, and procedures for the seizure and sale of property secured by liens for delinquencies under the Cigarette and Tobacco Products Tax Law. Existing law repeals these provisions, effective January 1, 2010.

This bill would delete the repeal date specified in current law, extending the authorization for these procedures indefinitely.

(10) The Cigarette and Tobacco Products Tax Law authorizes, until January 1, 2010, employees of the State Board of Equalization, under specified conditions, to enter and inspect a building, facility, site, or place, as described, where cigarettes or tobacco products are sold, produced, or stored, where there is evidence of tax evasion, or where there is failure to comply with the Master Settlement Agreement, a settlement entered into by states’ attorneys general and various tobacco product manufacturers that provides for the allocation of moneys to the states and certain territories. Refusal of the inspection is subject to penalty.

This bill would delete the repeal date of this authorization, thereby extending the ability of specified board employees to enter and inspect the locations under the specific circumstances indefinitely.

(11) The Cigarette and Tobacco Products Tax Law requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. That law requires a tax imposed by that law, with respect to distributions of cigarettes, to be paid by distributors through the use of stamps or meter register settings, and requires that these stamps or meter register settings be affixed to each package of cigarettes sold. That law prohibits the false or fraudulent making, altering, reuse, or counterfeiting of cigarette tax stamps or meter impressions by providing that a violation of that prohibition is a felony subject to imprisonment as specified, or to a fine of not less than \$1,000 and not more than \$10,000, or to both fine and imprisonment. That law prohibits the sale of unstamped or unmetered cigarettes, as specified, the violation of which is punishable by a fine of up to \$1,000, imprisonment in a county jail for not more than one year, or by both fine and imprisonment. That law authorizes, until January 1, 2010, the seizure and destruction of counterfeit cigarettes or tobacco products, as defined, and imposes misdemeanor punishment on the sale or possession thereof. That law imposes specified fines or imprisonment, or both, on a transporter who transports 40,000 or more cigarettes or tobacco products with a value of \$5,000 or more with the intent to defeat or evade the taxes imposed by that law under described conditions.

This bill would delete the repeal date and extend authorization for the seizure and destruction of counterfeit cigarettes or tobacco products and for the imposition of a misdemeanor for the sale and possession thereof. This bill would increase the fine for the sale of unstamped or unmetered cigarettes to \$25,000. This bill would also increase the fine imposed for falsely or fraudulently making a cigarette tax stamp or meter impression to \$25,000, and would increase the fine imposed on a transporter of cigarettes to \$25,000, for deposit into specified funds and accounts.

By increasing the penalties for existing crimes, this bill imposes a state-mandated local program.

(12) Existing law requires all distributors of cigarette and tobacco products that are required to be licensed by the State Board of Equalization to furnish a \$1,000 security deposit. Existing law, beginning January 1, 2007, requires a distributor, that defers payments for stamps or meter register settings and elects to make those payments on a monthly or a twice-monthly basis, to furnish a security deposit of at least 70% of, or 50% of, respectively, but not more than twice the amount of, stamps and meter register settings, for which payment is deferred.

This bill would provide that for a distributor who elects to make payments on a weekly basis, as specified, the amount of the security deposit would be 25% of the amount of, but not more than twice the amount of, stamps and meter register settings for which the payment is deferred. This bill would provide that distributors would not have to make

an additional security deposit if the distributor's average monthly purchase of stamps or meter register settings for the previous 12 months does not exceed 72,000 stamps or meter register settings and if the distributor meets specified conditions.

(13) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that all manufacturers or importers of blunt wraps place, or cause to be placed, appropriate labels for tobacco products as required by federal law.

SEC. 2. Section 22962 of the Business and Professions Code is amended to read:

22962. (a) For purposes of this section, the following terms have the following meanings:

(1) "Self-service display" means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.

(2) "Tobacco paraphernalia" means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

(3) "Tobacco product" means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

(4) "Tobacco store" means a retail business that meets all of the following requirements:

(A) Primarily sells tobacco products.

(B) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.

(C) Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Section 6903 of the Family Code.

(D) Does not sell alcoholic beverages or food for consumption on the premises.

(b) (1) (A) Except as permitted in subdivision (b) of Section 22960, it is unlawful for a person engaged in the retail sale of tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display. A person who violates this section is

subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(B) A person who violates this section is subject to those civil penalties specified in the schedule in subdivision (a) of Section 22958.

(2) It is unlawful for a person engaged in the retail sale of blunt wraps to place or maintain, or to cause to be placed or maintained, any blunt wraps advertising display within two feet of candy, snack, or nonalcoholic beverage displayed inside any store or business.

(3) It is unlawful for any person or business to place or maintain, or cause to be placed or maintained, any blunt wrap advertising display that is less than four feet above the floor.

(c) Subdivision (b) shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing less than six cigars. In any enforcement action brought pursuant to this division, the retail business that displays any of the items described in this subdivision in a self-service display shall have the burden of proving that it qualifies for the exemption established in this subdivision.

(d) The Attorney General, a city attorney, a county counsel, or a district attorney may bring a civil action to enforce this section.

(e) This section does not preempt or otherwise prohibit the adoption of a local standard that imposes greater restrictions on the access to tobacco products than the restrictions imposed by this section. To the extent that there is an inconsistency between this section and a local standard that imposes greater restrictions on the access to tobacco products, the greater restriction on the access to tobacco products in the local standard shall prevail.

SEC. 3. Section 22971 of the Business and Professions Code is amended to read:

22971. For purposes of this division, the following terms shall have the following meanings:

(a) “Board” means the State Board of Equalization.

(b) “Importer” means an importer as defined in Section 30019 of the Revenue and Taxation Code.

(c) “Distributor” means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(d) “Manufacturer” means a manufacturer of cigarettes or tobacco products sold in this state.

(e) “Retailer” means a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. Retailer includes a person who operates vending machines from which cigarettes or tobacco products are sold in this state.

(f) “Retail location” means both of the following:

(1) Any building from which cigarettes or tobacco products are sold at retail.

(2) A vending machine.

(g) “Wholesaler” means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

(h) “Cigarette” means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

(i) “License” means a license issued by the board pursuant to this division.

(j) “Licensee” means any person holding a license issued by the board pursuant to this division.

(k) “Sale” or “sold” means a sale as defined in Section 30006 of the Revenue and Taxation Code.

(l) “Tobacco products” means tobacco products as defined in subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code.

(m) “Unstamped package of cigarettes” means a package of cigarettes that does not bear a tax stamp as required under Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, including a package of cigarettes that bears a tax stamp of another state or taxing jurisdiction, a package of cigarettes that bears a counterfeit tax stamp, or a stamped or unstamped package of cigarettes that is marked “Not for sale in the United States.”

(n) “Person” means a person as defined in Section 30010 of the Revenue and Taxation Code.

(o) “Package of cigarettes” means a package as defined in Section 30015 of the Revenue and Taxation Code.

(p) (1) “Control” or “controlling” means possession, direct or indirect, of the power:

(A) To vote 25 percent or more of any class of the voting securities issued by a person.

(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise provided; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

(2) For purposes of subparagraph (B) of this subdivision, a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control such other person.

(3) For purposes of this division, the board may determine whether a person in fact controls another person.

(q) “Law enforcement agency” means a sheriff, a police department, or a city, county, or city and county agency or department designated by the governing body of that agency to enforce this chapter or to enforce local smoking and tobacco ordinances and regulations.

(r) “Brand family” has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

(s) The amendments made to this section by the act adding this subdivision shall become operative May 1, 2007.

SEC. 4. Section 22979.21 is added to the Business and Professions Code, to read:

22979.21. Every manufacturer or importer of tobacco products shall obtain and maintain a license under this division to engage in the sale of tobacco products. In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer shall do all of the following in the manner specified by the board:

(a) Submit to the board a list of all tobacco products they manufacture or import.

(b) Update the list of all tobacco products brands they manufacture or import whenever a new or additional brand is manufactured or imported or a listed brand is no longer manufactured or imported.

(c) Consent to jurisdiction of the California courts for the purpose of enforcement of this division and appoint a registered agent for service of process in this state and identify the registered agent to the board.

(d) The Legislature finds that solely appointing a registered agent for the purpose of service of process in this state pursuant to this subdivision does not establish a nexus with this state for tax purposes.

(e) This section shall become operative May 1, 2007.

SEC. 5. Section 22979.22 is added to the Business and Professions Code, to read:

22979.22. (a) An application for a license by a manufacturer or by an importer of tobacco products shall be on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant. For applicants whose corporate offices are at a separate location, the business name, address, and telephone number of the corporate office. Citations issued to licensees shall be forwarded to all addressees on the license.

(2) If any other licenses have been issued by the board to the applicant, the license or permit numbers for each license or permit then in effect.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she

knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both imprisonment and fine.

(5) Signature of the applicant.

(6) The name, address, and telephone number of the person designated by the manufacturer or the importer as its agent for receipt of service of process in this state.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application.

(c) The board shall provide electronic means for applicants to download and submit applications.

SEC. 6. Section 22979.23 is added to the Business and Professions Code, to read:

22979.23. (a) Every manufacturer or importer of chewing tobacco or snuff shall submit with each application a one-time license fee of ten thousand dollars (\$10,000).

(b) Every manufacturer or importer of tobacco products, excluding chewing tobacco or snuff, shall submit with each application a one-time license fee of two thousand dollars (\$2,000).

(c) If a manufacturer or importer is required to submit an application under, and to pay the fees required by, both subdivisions (a) and (b), the total amount of fees required to be submitted under this section shall not exceed ten thousand dollars (\$10,000).

SEC. 7. Section 22979.24 is added to the Business and Professions Code, to read:

22979.24. (a) Every manufacturer or importer holding a license pursuant to Section 22979.21 shall file a monthly report to the board, in a manner specified by the board, which may include, but is not limited to, electronic media. The monthly report shall include, but is not limited to, the following:

(1) A list of all distributors licensed pursuant to Section 22975 to which the manufacturer or importer shipped its tobacco products or caused its tobacco products to be shipped.

(2) The total wholesale cost of the products.

(b) The board may suspend the license or revoke the license, pursuant to the provisions applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code, of any importer or any manufacturer that has failed to comply with the requirements of this section.

(c) All information and records provided to the board pursuant to subdivision (a) are confidential in nature and shall not be disclosed by the board. Information required under subdivision (a) are not public records under the California Public Records Act, as described in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and shall not be open to public inspection.

(d) The amendments made to this section by the act adding this subdivision shall become operative May 1, 2007.

SEC. 8. Section 22980.1 of the Business and Professions Code is amended to read:

22980.1. (a) No manufacturer or importer shall sell cigarettes or tobacco products to a distributor, wholesaler, retailer, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(b) (1) Except as provided in paragraph (2), no distributor or wholesaler shall sell cigarettes or tobacco products to a retailer, wholesaler, distributor, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(2) This subdivision does not apply to any sale of cigarettes or tobacco products by a distributor, wholesaler, or any other person to a retailer, wholesaler, distributor, or any other person that the state, pursuant to the United States Constitution, the laws of the United States, or the California Constitution, is prohibited from regulating.

(c) No retailer, distributor, or wholesaler shall purchase packages of cigarettes or tobacco products from a manufacturer or importer who is not licensed pursuant to this division or whose license has been suspended or revoked.

(d) (1) No retailer, or wholesaler shall purchase cigarettes or tobacco products from any person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(2) Notwithstanding subdivision (c), no distributor shall purchase cigarettes or tobacco products from any person who is required to be licensed pursuant to this division but who is not licensed or whose license has been suspended or revoked.

(e) Each separate sale to, or by, a retailer, wholesaler, distributor, importer, manufacturer, or any other person who is not licensed pursuant to this division shall constitute a separate violation.

(f) No manufacturer, distributor, wholesaler, or importer may sell cigarette or tobacco products to any retailer or wholesaler whose license has been suspended or revoked unless all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for cigarette or tobacco products are paid and the license of that retailer or wholesaler has been reinstated by the board. Any payment received from a retailer or wholesaler shall be credited first to the outstanding debt for cigarettes or tobacco products and must be immediately reported to the board. The board shall determine the debt status of a suspended retailer or wholesaler licensee 25 days prior to the reinstatement of the license.

(g) No importer, distributor, or wholesaler, or distributor functioning as a wholesaler, or retailer, shall purchase, obtain, or otherwise acquire any package of cigarettes to which a stamp or meter impression may not be affixed in accordance with subdivision (b) of Section 30163 of the Revenue and Taxation Code, or any cigarettes obtained from a manufacturer or importer that cannot demonstrate full compliance with all

requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for the reporting of ingredients added to cigarettes.

(h) (1) Failure to comply with the provisions of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

(2) Notwithstanding paragraph (1), a manufacturer or importer who uses the most up-to-date licensing information provided by the board on the board's Web site to determine a person's licensing status is presumed to be in compliance with this section.

(i) The amendments that are made to this section by the act adding this subdivision shall become operative May 1, 2007.

SEC. 9. Chapter 7 (commencing with Section 22995) of Division 8.6 of the Business and Professions Code is repealed.

SEC. 10. Section 14950 of the Health and Safety Code is amended to read:

14950. (a) This part shall be known and may be cited as the California Cigarette Fire Safety and Firefighter Protection Act.

(b) As used in this part, the following terms have the following meanings:

(1) "Board" means the State Board of Equalization.

(2) "Cigarette" means a cigarette as defined in Section 30003 of the Revenue and Taxation Code, but does not include a little cigar. "Little cigar" means any roll of tobacco wrapped in a leaf of tobacco or any substance containing tobacco and weighing not more than three pounds per thousand.

(3) "Distributor" means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(4) "Manufacturer" means any of the following:

(A) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that the manufacturer intends to be sold in the state, including cigarettes intended to be sold in the United States through an importer.

(B) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States.

(C) An entity that becomes a successor of an entity described in subparagraph (A) or (B).

(5) "Offer to sell" means to offer or agree to sell.

(6) "Package" means package as defined in Section 30015 of the Revenue and Taxation Code.

(7) "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. This program ensures that the testing repeatability remains within the required repeatability values stated in paragraph (5) of subdivision (a) of Section 14952 for all test trials used to certify cigarettes in accordance with this part.

(8) “Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95 percent of the time.

(9) “Retailer” means a person who engages in the sale of cigarettes, but not for the purpose of resale.

(10) “Sale” or “sell” means any transfer, exchange, or barter, in any manner or by any means whatever, or any agreement for these purposes. The giving of cigarettes as samples, prizes, or gifts, and the exchanging of cigarettes for any consideration other than money are considered sales.

(11) “Stamp and meter impression” means stamp and meter impression as defined in Section 30018 of the Revenue and Taxation Code.

(12) “Wholesaler” means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

SEC. 11. Section 308 of the Penal Code is amended to read:

308. (a) (1) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or blunts wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

Notwithstanding Section 1464 or any other provision of law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator’s license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have

grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(2) For purposes of this section, “blunt wraps” means cigar papers or cigar wrappers of all types that are designed for smoking or ingestion of tobacco products and contain less than 50 percent tobacco.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars (\$75) or 30 hours of community service work.

(c) Every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall, upon conviction, be punished by a fine of fifty dollars (\$50) for the first offense, one hundred dollars (\$100) for the second offense, two hundred fifty dollars (\$250) for the third offense, and five hundred dollars (\$500) for the fourth offense and each subsequent violation of this provision, or by imprisonment in a county jail not exceeding 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) It is the Legislature’s intent to regulate the subject matter of this section. As a result, no city, county, or city and county shall adopt any ordinance or regulation inconsistent with this section.

SEC. 12. Section 830.11 of the Penal Code, as amended by Section 1 of Chapter 190 of the Statutes of 2005, is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real

Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(5) Persons employed as investigators and investigator supervisors of the Consumer Services Division or the Rail Safety and Carrier Division of the Public Utilities Commission who are designated by the commission's executive director and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(6) (A) Persons employed by the State Board of Equalization, Investigations Division, who are designated by the board's executive director, provided that the primary duty of these persons shall be the enforcement of laws administered by the State Board of Equalization.

(B) Persons designated pursuant to this paragraph are not entitled to peace officer retirement benefits.

(7) Persons employed by the Department of Food and Agriculture and designated by the Secretary of Food and Agriculture as investigators, investigator supervisors, and investigator managers, provided that the primary duty of these persons shall be enforcement of, and investigations relating to, the Food and Agricultural Code or Division 5 (commencing with Section 12001) of the Business and Professions Code.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section may not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 13. Section 830.11 of the Penal Code, as amended by Section 2 of Chapter 190 of the Statutes of 2005, is repealed.

SEC. 14. Section 30019 of the Revenue and Taxation Code is amended to read:

30019. "Importer" means any purchaser for resale in the United States of cigarettes or tobacco products manufactured outside of the United States for the purpose of making a first sale or distribution within the United States.

SEC. 15. Section 30142 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 70 of the Statutes of 2006, is amended to read:

30142. (a) The board shall fix the amount of the security required of any distributor and may increase or reduce the amount at any time. A minimum security in the amount of one thousand dollars (\$1,000) shall be furnished by every distributor that is required to be licensed.

(b) Except as provided in subdivision (d), if a distributor desires to defer payments for stamps or meter register settings, as provided in Article 2 (commencing with Section 30166) of Chapter 3.5, the board shall require a security as follows:

(1) If a distributor elects, under Section 30168, to make payments on a monthly basis, the board shall require a security equal to not less than 70 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(2) If a distributor elects, under Section 30168, to make payments on a twice-monthly basis, the board shall require a security equal to not less than 50 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(3) If a distributor elects, under Section 30168, to make payments on a weekly basis, the board shall require a security equal to not less than 25 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(c) The security required by the board pursuant to subdivision (b) may be in the form of any of the following, in the amount required by paragraph (1) or (2) of subdivision (b):

(1) Cash, or a cash equivalent.

(2) A surety bond.

(d) Upon authorization by the board, no additional security shall be required for a distributor that desires to defer payments for stamps or meter register settings, as provided in Article 2 (commencing with Section 30166) of Chapter 3.5, if the distributor's average monthly purchase of stamps or meter register settings for the previous 12 months does not exceed seventy-two thousand (72,000) stamps or meter register settings and if the distributor meets all of the following:

(1) Has been licensed under this part for a minimum of five years.

(2) Has not been delinquent in the filing of any reports or returns required under this part for the preceding three consecutive years.

(3) Has not been delinquent in the payment of any tax under this part, or for any other tax or fee administered or collected by the board, for the preceding three consecutive years.

(4) Provides to the board and updates, as necessary, an electronic mail address for the purpose of receiving payment information, including, but

not limited to, amounts owing for stamps and meter register settings purchased.

(5) Any other criteria the board may require.

SEC. 16. Section 30168 of the Revenue and Taxation Code, as amended by Section 3 of Chapter 70 of the Statutes of 2006, is amended to read:

30168. (a) Except as provided for in subdivision (c), amounts owing for stamps and meter register settings purchased on the deferred-payment basis shall be due and payable based on the distributor's election to make the payment pursuant to subdivision (b). Payment shall be made by a remittance payable to the board.

(b) A distributor shall elect to make the payment required by subdivision (a) on either a monthly, a twice-monthly, or a weekly basis. An election made pursuant to this subdivision shall remain in effect for at least one year from the date the election is made. If the board finds that good cause exists for a distributor's inability to maintain the election for the full year, the board shall authorize the distributor to make a new election, as otherwise authorized by this subdivision, prior to the expiration of the one-year period following the prior election.

(1) If a distributor elects to make the payment required by subdivision (a) on a monthly basis, the distributor shall remit the payment on or before the 25th day of the month following the month in which the stamps and meter register settings were purchased.

(2) If a distributor elects to make the payment required by subdivision (a) on a twice-monthly basis, the distributor shall make two remittances during the month following the month in which the stamps and meter register settings were purchased. The first monthly remittance shall be made on or before the fifth day of the month and shall be equal to either one-half of the total amount of those purchases of stamps and meter register settings that were made during the preceding month or the total amount of those purchases of stamps and meter register settings that were made between the first day and the 15th day of the preceding month, whichever is greater. The second monthly remittance shall be made on or before the 25th day of the month for the remainder of those purchases of stamps and meter register settings that were made in the preceding month.

(3) If a distributor elects to make the payment required by subdivision (a) on a weekly basis, the distributor shall remit the payment on or before Wednesday following the week in which the stamps and meter register settings were approved and released. Every distributor electing to make payment on a weekly basis shall provide to the board and update, as necessary, an electronic mail address for the purpose of receiving payment information, including but not limited to, amounts owing for stamps and meter register settings purchased.

(c) Amounts owing for stamps and meter register settings purchased on the deferred-payment basis without a security pursuant to subdivision (d) of Section 30142 shall be due and payable on or before Wednesday

following the week in which the stamps and meter register settings were purchased. Payment shall be made by a remittance payable to the board.

SEC. 17. Section 30216 of the Revenue and Taxation Code is repealed.

SEC. 18. Section 30359 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 30435 of the Revenue and Taxation Code is amended to read:

30435. (a) An employee of the board, upon presentation of the appropriate identification and credentials, is authorized to enter into, and conduct an inspection of any building, facility, site, or place described in subdivision (b).

(b) Any building, facility, site, or place at which cigarette or tobacco products are sold, produced, or stored, or any building, facility, site, or place for which there is evidence of either the evasion of the taxes imposed under this part, or the failure to comply with the requirements of the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code, including, but not limited to, Section 30165.1.

(c) Any inspection performed under the authority of this section shall be performed in a reasonable manner and at a reasonable time, taking into consideration the normal business hours of the building, facility, site, or place that is inspected.

(d) Any person that refuses to allow an inspection authorized under this section is subject to the penalty imposed by Section 30471.

SEC. 20. Section 30473 of the Revenue and Taxation Code is amended to read:

30473. Any person who falsely or fraudulently makes, forges, alters, reuses or counterfeits any stamp or meter impression provided for or authorized under this part, or tampers with any metering machine authorized under this part, or causes or procures to be falsely or fraudulently made, forged, altered, reused, or counterfeited, any such stamp or meter impression or knowingly and willfully utters, publishes, passes, or tenders as genuine any such false, forged, altered, reused, or counterfeited stamp or meter impression, for the purpose of evading the tax imposed by this part, is guilty of a felony and subject to imprisonment for two, three, or four years, or to a fine of not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000), or to both fine and imprisonment.

SEC. 21. Section 30474 of the Revenue and Taxation Code is amended to read:

30474. (a) Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined an amount not to exceed twenty-five thousand dollars (\$25,000), or be imprisoned for a period not to exceed one year in

the county jail, or, at the discretion of the court, be subject to both fine and imprisonment in the county jail.

(b) In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars (\$100) for each carton of 200 cigarettes, or portion thereof, if that person knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization.

(c) This section does not apply to a licensed distributor that possesses, keeps, stores, or retains cigarettes before the necessary stamp or meter impression is affixed.

SEC. 22. Section 30474.1 of the Revenue and Taxation Code is amended to read:

30474.1. (a) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit tobacco products, or the sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, wholesaler, or retailer shall result in the seizure of the product by the board or any law enforcement agency and shall constitute a misdemeanor punishable as follows:

(1) A violation with a total quantity of less than two cartons of cigarettes shall be a misdemeanor punishable by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not to exceed one year in a county jail, or both fine and imprisonment, and shall also result in the revocation by the board of the manufacturer, distributor, or wholesale license.

(2) A violation with a quantity of two cartons of cigarettes or more shall be a misdemeanor punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment not to exceed one year in a county jail, or both fine and imprisonment, and shall also result in the revocation by the board of the manufacturer, distributor, or wholesaler license.

(b) A court shall consider a defendant's ability to pay when imposing fines pursuant to this section.

(c) For the purposes of this section, counterfeit cigarette and tobacco products include cigarette and tobacco products that have false manufacturing labels, false or fraudulent stamps or meter impressions, or a combination thereof.

(d) The board shall seize and destroy any cigarettes or other tobacco products forfeited to the state under this section.

SEC. 23. Section 30475 of the Revenue and Taxation Code is amended to read:

30475. (a) Any transporter who transports cigarettes or tobacco products upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle

the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars (\$1,000) or be imprisoned for not more than one year in the county jail, or be subject to both fine and imprisonment in the discretion of the court.

(b) Any transporter who, with intent to defeat or evade or with intent to aid another to defeat or evade the taxes imposed by this part, at any given time transports 40,000 or more cigarettes or tobacco products with a value of five thousand dollars (\$5,000) or more upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 shall be punished by imprisonment in the county jail for not more than one year, or in the state prison, or by fine of not more than twenty-five thousand dollars (\$25,000), or be subject to both fine and imprisonment in the discretion of the court.

SEC. 24. The Legislature finds and declares that Section 7 of this act, which amends Section 22979.24 of the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow for the State Board of Equalization to fully accomplish its goals, it is imperative to protect the interests of those persons submitting information to the board to ensure that any business or trade secrets that are required to be submitted by those persons by this act be protected as confidential information.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.